

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 31, 2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 117, 1/26/2001
Executive Action: HB 117, HB 104, SB 283, SB 247, SB 109, SB 266

HEARING ON HB 117

Sponsor: REP. JOAN ANDERSON, HD 23, CARBON COUNTY

Proponents: John Connor, Attorney General's Office

Opponents: None

Opening Statement by Sponsor:

REP. JOAN ANDERSON, HD 23, CARBON COUNTY, said this bill increases the penalties for negligent vehicular assault involving serious bodily injury from five to ten years.

EXHIBIT(jus25a01) She handed in a testimony. She handed out two letters involving drunk driving incidents **EXHIBIT(jus25a02)** **EXHIBIT(jus25a03)**.

Proponents' Testimony:

John Connor, Attorney General's Office, explained the need to look at the negligent vehicular assault situation because the current maximum penalty for this is five years and that does not give adequate time for supervision of those persons who cause serious bodily injury. He believed this was an important issue because this is a victims' bill and more supervision is needed for a longer period of time. He pointed out there was a revision for restitution added in the statutes in 1997 explaining that supervision is the preferred method if restitution is available as an option. The intent is to highlight this fact that supervision and restitution was paramount where negligent vehicular assault is concerned. He felt that increased penalties would be good public policy to offer these supervision restitution situations.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. JOAN ANDERSON, HD 23, CARBON COUNTY, summarized this bill is a victim's bill and it would offer help to the victims' of these type of incidences.

EXECUTIVE ACTION ON HB 117

Motion: SEN. WALT MCNUTT moved that HB 117 BE CONCURRED IN.

Discussion:

SEN. RIC HOLDEN asked if this bill would have an effect on the corrections budget and if anyone questioned the sponsor in regard to this. SEN. JERRY O'NEIL answered he had talked with the sponsor before the hearing and it was discussed that they would increase the costs of supervision and it possibly would increase taxes to the general fund.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 104

Motion: SEN. MIKE HALLIGAN moved HB 104 BE AMENDED.

EXHIBIT(jus25a04) Amendments were handed out.

Discussion:

Valencia Lane, Legislative Staffer, said these amendments were suggested by **John Connor, Department of Justice.** A copy of these were sent to the Department of Corrections and these amendments have been made more clear.

SEN. HALLIGAN said there were some concerns raised due to inconsistencies of this bill, but he pointed out the amendments add clarity to the defendant and prosecutor offering 120 days in which to file a written objection to an oral pronouncement that is different than the written. He also explained the language added.

Vote: Motion carried unanimously to BE AMENDED.

Motion/Vote: SEN. HALLIGAN moved HB 104 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 283

Motion: SEN. HALLIGAN moved SB 283 BE AMENDED. **EXHIBIT**(jus25a05) Amendments were handed out.

Discussion:

SEN. HALLIGAN explained the changes made within the amendments. He said that foster care review committees were set up so they would meet every six months. He mentioned the pilot program that was created and how it was separately funded, which was costly. He pointed out from the testimony at the hearing how they did not want two systems and the proponents were fighting to keep two systems. **SEN. O'NEIL** felt this system should have one independent group to work with foster care review.

SEN. DUANE GRIMES asked if the six month review sequence is current practice. **SEN. HALLIGAN** answered yes, they are.

SEN. HOLDEN asked how this amendment would affect the fiscal note. **SEN. HALLIGAN** answered this amendment should take the

fiscal note to present law and should not be requiring more money.

SEN. HOLDEN asked if the governor's executive budget have the amount already available for this program. **SEN. HALLIGAN** answered yes, it does.

SEN. HOLDEN asked how the district court judge would be making the recommendation versus how it is done currently. **SEN. HALLIGAN** answered it is currently done by the judges opt in to the pilot program, but by passing this amendment there will be no new funds so the judges would have to pay the costs in their own judicial district due to no state dollars available.

SEN. HOLDEN asked if the district judge would have to go to the county commissioners and ask for the money to put the program in place in his/her district. **SEN. HALLIGAN** answered yes, they would.

Vote: Motion carried unanimously.

Discussion:

SEN. HALLIGAN said he wants to make sure that this is not open to the public. **Valencia Lane** explained currently the Citizen Review Boards meet, gather information and make the decisions without people involved. She said the proposal under the bill would be that the hearings would remain open to the participants only, not to the public and the change in the bill would require that the meetings be made open for discussion.

SEN. HALLIGAN commented this is a personal setting and if the decision cannot be made with the participants involvement then members should not be on a Citizens Review Board (CRB) or Foster Care Committee. He said there could be an influence on certain aspects if it was open to the public. **SEN. O'NEIL** said hearings should be as open as possible without damaging the people involved.

{Tape 1; Side B}

SEN. GRIMES pointed out the Citizen Review Board thinks that participation is critical. He said he wouldn't want to put the foster care families that are taking care of these children, in a public setting that could be a burden.

Motion: SEN. HALLIGAN moved SB 283 DO PASS AS AMENDED.

Discussion:

SEN. HOLDEN asked if a fiscal note could be obtained and he commented that he didn't understand what these CRBs are trying to accomplish. **SEN. HALLIGAN** said these amendments were brought in early because they knew there was no funding available and these programs are to make it more efficient to the process of foster care.

SEN. HOLDEN asked what the deal with the confidentiality was pertaining to the meetings. **SEN. HALLIGAN** said during a CRB or a Foster Care Review all public and participants are involved and the discussion continues and then participants and public are excluded when the final decision is to be made within the meetings.

SEN. HOLDEN felt he could not be in support of this bill since these meetings should have the involvement of the participants during final decision making.

SEN. GRIMES said during a final decision making process it involves the confidentiality of the child and it becomes a sensitive issue. He asked how broad or narrow is the decision making during the meeting regarding confidentiality laws. **SEN. HALLIGAN** said it only should apply to drug and alcohol laws that are very restrictive regarding information that is disclosed.

SEN. O'NEIL said he liked this bill because it doesn't allow an independent review, it offers justice and the meetings need to be open so that the foster families understand what is happening to the children.

SEN. GRIMES mentioned the CRB board members are doing a great job and take their role seriously.

Vote: Motion carried 8-1 with **SEN. HOLDEN** voting no.

Discussion:

CHAIRMAN LORENTS GROSFIELD said he had asked for a new fiscal note on this bill and asked if this would take more work from the budget office. **SEN. HALLIGAN** answered it should be a simple task.

EXECUTIVE ACTION ON SB 247

Motion: **SEN. GRIMES** moved **SB 247 DO POSTPONE INDEFINITELY.**

Discussion:

SEN. GRIMES said this bill deals with the supreme court and it pertains to one main issue and becomes a conflict for this committee. He said this is a criminal conviction for making a false claim.

CHAIRMAN GROSFIELD asked when the department sent out the information to the person involved, would it help to add language to make it more specific. **SEN. GRIMES** said language doesn't seem to flow like it should and they are going after the people who had reason to know that the situation was fraud.

SEN. O'NEIL added the language in this bill could be cleared up, but it might be better to wait until a supreme court decision is made and have it done next session.

SEN. MCNUTT mentioned the case files and the amount of money that is done each year. He believed this bill needs to be postponed.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 109

Motion: **SEN. O'NEIL** moved **SB 109 BE AMENDED. EXHIBIT(jus25a06)**
Amendments were handed out.

Discussion:

SEN. O'NEIL said this bill includes rules as to who can practice before the courts. He explained how this bill provides oversight over the supreme court.

CHAIRMAN GROSFIELD asked if the language is being expanded from the constitution to include admission to the bar. **SEN. O'NEIL** answered that it now says "rules of procedure", "practice and procedure" and "admission to the bar in conduct with its members".

CHAIRMAN GROSFIELD asked about the difference between rules of procedure and practice and procedure. **SEN. O'NEIL** answered these rules are similar to the civil procedure and practice and procedure would be similar to the rules of uniform court rules considering the ethics of the attorneys.

CHAIRMAN GROSFIELD asked if the intent was to expand the legislature's ability to review all the items that are currently in the constitution. **SEN. O'NEIL** answered that is correct.

CHAIRMAN GROSFIELD said the legislature now has rules of procedure, which must be for the appellate or all other courts and he asked if this correct, plus he asked if attorney practices are included. **SEN. O'NEIL** said this is a cleanup bill for the constitution.

SEN. HALLIGAN said there is a standard of care when someone is licensed into a profession whether it be medicine, law or any other profession.

CHAIRMAN GROSFIELD said the language in this bill doesn't allow for what the title of the bill should do. He said it sounds as if the only ability the committee would have is to disapprove and that is all. **SEN. HALLIGAN** said it offers a disapproving way of the practice of admitting people to the bar and there is an interplay between the branches.

SEN. AL BISHOP mentioned Supreme Court Justices are elected the same way as the legislators are and if they are not doing the work they can get booted out and he wondered what the difference would be, asking why are the legislators more responsive to the people than the supreme court justices would be. **SEN. O'NEIL** felt the legislature was more responsive to the public because the legislature is the public's body. He said these procedures have been around and there is no change to them.

Vote: Motion carried 8-1 with **SEN. HALLIGAN** voting no.

Motion: **SEN. O'NEIL** moved **SB109 DO PASS AS AMENDED.**

Discussion:

SEN. STEVE DOHERTY said he appreciates the attempts for this bill, but the language within the amendment goes directly into the issue of the supreme court that the rules of procedure shall be subject to disapproval by the legislature. He mentioned rules of procedure are different than rules of practice and procedure and admission to the bar. The court should be the disciplinary committee for these procedures. He added this language would be a change to the current constitution.

SEN. O'NEIL said the public gains more power to be able to have oversight towards the court, and it allows the public little voice in the issues of the court increasing actions.

Vote: Motion failed 2-7 with **SEN. O'NEIL** and **SEN. GROSFIELD** voting yes.

Motion/Vote: SEN. HALLIGAN moved SB 109 BE TABLED. Motion carried 8-1 with SEN. O'NEIL voting no.

EXECUTIVE ACTION ON SB 266

Motion: SEN. DOHERTY moved SB 266 BE AMENDED. **EXHIBIT(jus25a07)**
Amendments were handed out.

Discussion:

SEN. DOHERTY explained the amendments address the issues with regard to good cause for dismissal by an employer that is a religious institution. He added this amendment provides a definition of sexual orientation.

SEN. GRIMES asked if bisexuality or homosexuality was defined. SEN. DOHERTY answered it was not defined within this law and he added there are standard definitions by the medical community that deal with these issues.

SEN. GRIMES felt this situation equates an orientation for heterosexuality with bisexuality and homosexuality. He said this brings the issue of the belief system up and he believes that each person is born with their own personal sexuality.

{Tape 2; Side B}

CHAIRMAN GROSFIELD asked how religious institutions take care of this issue. He also mentioned the language in the amendment doesn't describe specifically the intent of the bill. SEN. DOHERTY suggested taking the word "primarily" out of the language in the amendment. He pointed out a pedophile is a sexual deviant and there may be questions pertaining to a homosexual person as a sexual deviant. He said homosexuality is not recognized as a deviancy.

SEN. GRIMES said he does not want to exclude religious organizations for funding to provide at a far cheaper cost of social services and this is a problem that may arise within Subsection D. SEN. DOHERTY said faith-based services are not being precluded from receiving federal funds they are getting precluded if they do receive federal funds by acting in a biased way.

SEN. O'NEIL pointed out groups that he knows of that are a religious based institutions and how they do not hire homosexuals and under the first amendment to the constitution one can find

Freedom to Associate. He said people should be able to associate with homosexuals.

SEN. DOHERTY felt the amendments clean up the bill and attempt to address the issues that people raised in testimonies. He stated there shouldn't be a need of association extending to employment. He said this bill deals with a fundamental right to earn a living and it is a heavy property right.

Vote: Motion failed 3-6 with **SEN. DOHERTY, SEN. HALLIGAN AND SEN. PEASE** voting yes.

Discussion:

SEN. GRIMES said within the Wrongful Discharge Act it states this has to be for a job related incidence, but there doesn't seem to be any case law in Montana dealing with good cause or having a good cause termination. He was concerned about the incrementalism of this bill and he opposes this amendment due to the issues this bill deals with.

Motion: SEN. GRIMES moved **SB 266 BE TABLED.**

Discussion:

SEN. DOHERTY stated this type of harassment has occurred in Montana and with this bill he felt that they were trying to get across to an employer, who comments on firing an employee due to their sexual orientation, this bill should stop that action from taking place.

SEN. O'NEIL read an email from a family member who is gay to point out the effects this bill has on sexually orientated people.

SEN. GRIMES mentioned he was aware of people who are sexually orientated and he would not want them to be subjected to this bill and its issues. He said under the Wrongful Discharge Act the issue becomes a categorical exclusion that raises other issues.

CHAIRMAN GROSFIELD explained the ruling dealing with anonymous testimony and he visited with **Greg Petesch, Chief Legal Counsel for Legislative Services** to receive the advice that privacy cannot be protected at a public hearing on a bill. He said testimony could be read off the record, but the ruling was made to go ahead and allow the anonymous testimony read since a procedural motion was made during the hearing.

He mentioned the reporters in the room during the hearing did not report the testimony accurately and from the articles in different newspapers gave objections from the committee directed at himself for not allowing the anonymous testimony to be on the record, but during the hearing there was objection to reading the testimony. He felt the testimony should be included with the records of this hearing.

SEN. GRIMES talked with the person who submitted the anonymous testimony and he said there were concerns regarding the employment of this person. He did not object to this testimony being on record.

Vote: Motion SB 266 BE POSTPONED INDEFINITELY carried 6-3 with **SEN. HALLIGAN, SEN. PEASE AND SEN. DOHERTY** voting no.

{Tape 3; Side A}

Discussion Regarding Anonymous Testimony:

SEN. GRIMES mentioned the anonymous person he visited with regarding the testimony and felt there were more issues involved surrounding the bill that could be pertinent. He said it becomes difficult to have validity of an anonymous testimony during a public hearing. He added this could give misleading information to a committee, but if it were allowed, it would be helpful on many issues.

CHAIRMAN GROSFIELD talked about privacy issues during a public hearing and how the reporters in the room should respect testimony from proponents and opponents. He mentioned a controversial bill from the last session in which a young girl testified. No matter the age or testimony, the room cannot be closed off since it is a public hearing.

SEN. DOHERTY said the committee should review these cases and learn to show sensitivity and common sense to the needs of people who come forward to testify.

SEN. HALLIGAN talked about sensitive bills and how this committee is allowed to hear and make the final decision, weighing the evidence including an anonymous letter.

SEN. GRIMES asked the chairman to visit with individuals prior to their testimony to determine if the testimony needs to be stated and on the record.

CHAIRMAN GROSFIELD stated he understood the committee would recommend the chairman to use discretion and these testimonies should be read on record.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus25aad)